IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.M.JOSEPH

TUESDAY, THE 27TH FEBRUARY 2007 / 8TH PHALGUNA 1928

WP(C).No. 899 of 2007(F)

PETITIONER:

THE MANAGER, ST.AUGUSTINE'S U.P.SCHOOL,
THURAVOOR NORTH, ANGAMALY.

BY ADV. SRI.V.M.KURIAN
SRI.MATHEW B. KURIAN
SRI.K.T.THOMAS

RESPONDENTS:
----

1. **THE DIRECTOR OF PUBLIC INSTRUCTION,**
   THIRUVANANTHAPURAM.

2. **THE DEPUTY DIRECTOR OF EDUCATION,**
   ERNAKULAM.

3. **ASSISTANT EDUCATIONAL OFFICER,**
   ANGAMALY,
   ERNAKULAM DISTRICT.

4. **SR. P.N. MAGY, HEADMISTRESS,**
   ST.AUGUSTINE'S U.P.SCHOOL,
   THURAVOOR NORTH, ANGAMALY.

5. **SONA GEORGE, UPSA,**
   ST.AUGUSTINE'S U.P.SCHOOL,
   THURAVOOR NORTH, ANGAMALY.

BY ADV. SRI.ESM.KABEER
BY GOVERNMENT PLEADER SRI.T.T.MOHAMMED

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 27/02/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

W.P.(C) NO.899/2007

APPENDIX

PETITIONER'S EXHIBITS

EXT.P1:- COPY OF THE CERTIFICATE ISSUED BY THE MAJOR ARCH BISHOP OF ERNAKULAM- ANGAMALY DIOCESE DT.13.6.06 CONFIRMING THE ESTABLISHMENT AND ADMINISTRATION AND STATUS OF THE SCHOOLS.

EXT.P2:- COPY OF THE CONSTITUTION OF THE ST.AUGUSTINE'S ROMAN CATHOLIC CHURCH CORPORATE EDUCATIONAL AGENCY DT.5.6.03.

EXT.P3:- COPY OF THE CERTIFICATE DT.27.2.04 ISSUED BY TAHSILDAR, ALUVA CONFIRMING THE OWNERSHIP AND MANAGEMENT OF THE FOUR SCHOOLS VEST WITH ST.AUGUSTINE'S ROMAN CATHOLIC CHURCH.

EXT.P4:- COPY OF THE GAZETTE NOTIFICATION DT.15.2.1982 SANCTUIONING THE HIGH SCHOOL IN FAVOUR OF THE ST.AUGUSTINE'S CHURCH.

EXT.P5:- COPY OF THE ORDER DT.30.5.06 ISSUED BY THE 2ND RESPONDENT.

EXT.P6:- COPY OF THE REQUEST DT.2.5.06 SUBMITTED BY THE MEMBERS OF THE PARENT TEACHER ASSOCIATING EXECUTIVE.

EXT.P7:- COPY OF THE APPOINTMENT ORDER DT.ISSUED TO THE 4TH RESPONDENT.

EXT.P8:- COPY OF THE REPRESENTATION DT.30.8.06 SUBMITTED BY THE 5TH RESPONDENT BEFORE THE 1ST RESPONDENT.

EXT.P9:- COPY OF THE ORDER DT.29.11.06 ISSUED BY THE 1ST RESPONDENT.

EXT.P10:- COPY OF THE INTIMATION DT. 24.11.06 ISSUED BY THE GOVERNMENT.

EXT.P11:- COPY OF THE ORDER DT.18.9.06 ISSUED BY THE GOVERNMENT.

RESPONDENTS EXHIBITS

EXT.R5(a):- COPY OF THE ORDER ISSUED BY THE GOVERNMENT DT.22.10.01.

EXT.R5(b):- COPY OF THE ORDER DT.28.6.04 ISSUED BY THE DIRECTOR OF PUBLIC INSTRUCTIONS.

/TRUE COPY/

tss

K. M. JOSEPH, J.

W.P.C. NO. 899 OF 2007 F

Dated this the 27th February, 2007

JUDGMENT

Petitioner challenges Ext.P9. Case of the petitioner, in brief, is as follows:

Petitioner is the Manager of the St. Augustine's U.P. School, Thuravoor North, Angamaly. It is claiming right under Article 30 of the Constitution of India. Petitioner appointed fourth respondent as HM. The matter was pending before third respondent AEO, for approval. In the meantime, fifth respondent who claims that she is the senior-most, preferred Ext.P8 petition before first respondent and on Ext.P8, Ext.P9 order was passed by first respondent, DPI. According to petitioner, Ext.P9 was passed without jurisdiction and further without notice to the petitioner. In Ext.P9, there is a direction to the Manager to take steps to appoint the fifth respondent as HM according to seniority. It is further stated that as the Manager

has not produced evidence to prove minority right of the institution, the request of fifth respondent is genuine and deserves consideration.

2. I heard learned counsel appearing for the petitioner and fifth respondent, besides the learned Government Pleader. It would appear that there is substance in the complaint of petitioner. It would also appear that the first respondent DPI does not have jurisdiction in respect of appointment of HM. Reliance placed on Rule 8A of Chapter XIV A KER by counsel for fifth respondent appears to be misplaced as it appears to deal with appointment of teachers. In such circumstances, I feel that Ext.P9 is to be quashed only for the reason that there is no jurisdiction for the first respondent to issue Ext.P9. Accordingly, Ext.P9 is quashed only on that ground. The matter is pending before third respondent AEO. In such circumstances, the Writ Petition is disposed of directing that a decision shall be taken in the matter by the third respondent in accordance with

law, after giving an opportunity of being heard to the petitioner and respondents 4 and 5, within a period of one month from the date of receipt of a copy of this Judgment.

K. M. JOSEPH, JUDGE

kbk.